

**OPINION
59-107**

January 26, 1959 (OPINION)

ELECTION

RE: Returns - County Canvassing Board, Members - Clerk of District C

We have your letter of January 23, 1959, in which you request the opinion of this office concerning section 16-1314 of the 1957 Supplement to the North Dakota Revised Code of 1943.

You state there is some difference of opinion in your county as to whether the amendment eliminates the clerk of the district court as a member of the county canvassing board.

The composition of the county canvassing board is determined by section 16-1313 of the North Dakota Revised Code of 1943 and reads as follows:

"The county canvassing board shall be composed of the clerk of the district court, the county auditor, chairman of the board of county commissioners, and the chairman of each of the county committees of the two political parties which cast the highest number of votes for governor at the preceding general election."

From reading the above section, it would appear very definitely that the clerk of the district court is a member of the county canvassing board.

Section 16-1314 of the 1957 Supplement to the North Dakota Revised Code of 1943 reads as follows:

"No member of the county canvassing board who shall be a candidate for office at an election shall serve on such board. If the county auditor is a candidate for office, he shall take no part in the canvass but shall act as clerk of such board. If the chairman of the board of county commissioners is a candidate for office, he shall appoint a county commissioner who is not a candidate for office to act in his capacity as a member of the county canvassing board, and if either or both of the chairmen of the county committees of the two political parties who would otherwise be members of the canvassing board, are disqualified by reason of being candidates for office, they shall appoint an alternate elector or electors from their respective county executive committees to act in their capacity as a member of the county canvassing board. Any three members of the board or their duly appointed replacements shall constitute a quorum and may make the canvass provided for in this chapter and certify the results thereof."

It appears to us that this section deals with filling replacements on the board and not with the composition thereof. It is true that no reference is made to the clerk of the district court in this section,

but we do not think that such omission is sufficient to eliminate him when he is clearly named in section 16-1313 of the North Dakota Revised Code of 1943.

Of course from a practical standpoint in most instances the clerk of the district court would be eliminated from active duty on the board because in so many instances he would be a candidate for reelection. Nevertheless, it is the opinion of this office that in a situation where the clerk of the district court is not a candidate for reelection he would be entitled to serve on the county canvassing board.

LESLIE R. BURGUM

Attorney General